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6 MEHRDAD ALEMOZAFFAR

11 MEHRDAD ALEMOZAFFAR,) Case No. C 07-04494 JSW
12 Plaintiff,)
13 vs.)
14)
15 CITY AND COUNTY OF SAN) Date: December 7, 2007
16 FRANCISCO, a municipal corporation;) Time: 1:30 p.m.
17 JESSE SERNA, individually and in his) Place: Courtroom 2
18 official capacity as a police officer for the)
19 CITY AND COUNTY OF SAN)
20 FRANCISCO; GARY MORIYAMA,)
21 individually and in his official capacity as a)
22 police officer for the CITY AND COUNTY)
23 OF SAN FRANCISCO; J. MCGRATH,)
24 individually and in his official capacity as a)
25 police officer for the CITY AND COUNTY)
26 OF SAN FRANCISCO; J. REYMUNDO,)
27 individually and in his official capacity as a)
deputy sheriff officer for the CITY AND)
COUNTY OF SAN FRANCISCO; G.)
COVIELLO, individually and in his official)
capacity as a deputy sheriff officer for the)
CITY AND COUNTY OF SAN)
FRANCISCO ; and DOES 1-50,)
individually and in their official capacities.)
Defendants.)

1 The parties to the above-entitled action submit this Joint Case Management Statement
2 in anticipation of the December 7, 2007 Case Management Conference.

3 **JOINT CASE MANAGEMENT STATEMENT**

4 **1. JURISDICTION AND SERVICE**

5 The Court has subject matter jurisdiction over this case pursuant to its federal
6 question jurisdiction and supplemental jurisdiction. Defendant City and County of San
7 Francisco answered and removed the case to federal court. Plaintiff served the City.
8 The parties currently have a dispute about whether the individually named officers were
9 properly served. The parties anticipate resolving this dispute shortly.

10 **2. FACTS**

11 **A. Plaintiff's Version**

12 Plaintiff Mehrdad Almozaffar alleges that on December 17, 2006, members of the
13 San Francisco Police and Sheriff's Department tackled plaintiff, restrained his arms in
14 nylon restraints and repeatedly jolted him with a Taser stun gun more than ten times,
15 resulting in scarring, burning and other personal injuries. Plaintiff alleges these events
16 occurred because he informed Officer Jesse Serna that he was going to report him to
17 his superiors for calling him a girl.

18 Plaintiff claims that the above facts represent excessive use of force by officers
19 and deputies of the City and County of San Francisco in violation of State and Federal
20 Constitutions and state common law. Plaintiff further claims that said use of force is
21 symptomatic of the City and County of San Francisco's policies, procedures, and
22 training of officers and deputies, particularly in the North Beach area of San Francisco.

23 **B. Defendants' Version**

24 On December 17, 2006, at approximately 2 a.m., San Francisco police officers
25 and sheriff deputies were helping to clear Broadway of bar patrons as the bars and
26 clubs in the area closed down. Broadway developed a very significant problem with
27 drunk and violent patrons causing problems and committing crimes on Friday and
28

1 Saturday nights. As a result, officers and deputies heavily patrol the area and work to
2 clear the area of bar-goers when the bars close.

3 Plaintiff was drunk and refusing to follow instructions to clear the area. He
4 became aggressive and hostile toward the police and was interfering with their ability to
5 clear the area. Officers therefore arrested Plaintiff. Plaintiff physically resisted, and the
6 officers used control holds to obtain physical control of him. When he continued to
7 resist, a sheriff deputy warned him that the deputy would apply a taser to him if he did
8 not stop resisting. When Plaintiff continued to resist, the deputy applied taser to Plaintiff
9 twice. Plaintiff then stopped resisting, and he was taken into custody. A paramedic
10 examined him and clear him, and the officers then cited and released him. Plaintiff was
11 apologetic after the fact.

12 **C. Principal factual issues in dispute**

13 • Whether Plaintiff was intoxicated and if so, to what extent.
14 • Whether Plaintiff resisted arrest.
15 • Whether Plaintiff engaged in the conduct described in Defendants'
16 version.
17 • Whether the officers/deputies engaged in the conduct described in
18 Plaintiff's version.
19 • The level of force that officers used against Plaintiff.
20 • Whether Defendants made the statements attributed to them by Plaintiff.
21 • The number of taser applications applied to Plaintiff.
22 • The nature and extent of Plaintiff's injuries.

23 **3. LEGAL ISSUES**

24 • Whether the officers had reasonable suspicion and/or probable cause to
25 detain and/or arrest Plaintiff.
26 • Whether the officers used excessive force against Plaintiff.
27 • Whether the officers are entitled to qualified immunity.
28 • Whether Defendants caused any of Plaintiff's alleged damages.

1 • Whether Plaintiff was at fault for any damages that he sustained.

2 **4. MOTIONS**

3 No motions have been filed or are currently scheduled for hearing. Plaintiff does
4 not anticipate filing any motions at this time. Defendants may move for summary
5 judgment or partial summary judgment. Defendants may move to stay *Monell* discovery
6 and to bifurcate *Monell* issues from the underlying liability issues. Defendants may
7 move to bifurcate punitive damages issues and discovery from other issues in the case.

8 **5. AMENDMENT OF PLEADINGS**

9 The parties do not expect to amend the pleadings.

10 **6. EVIDENCE PRESERVATION**

11 The parties have preserved evidence.

12 **7. DISCLOSURES**

13 The parties have agreed to make initial disclosures at the time of filing the joint
14 case management statement.

15 **8. DISCOVERY – JOINT DISCOVERY PLAN**

16 **A. Plaintiff's Discovery Plan**

17 i. Depositions

18 Plaintiff anticipates taking the deposition of each defendant and expert witness
19 offered by the defendants. Plaintiff also anticipates taking "PMK" depositions for the
20 Sheriff's Department and the Police Department.

21 ii. Request for Production

22 Plaintiff will request defendants produce the documents identified in their initial
23 disclosures as well as: the internal affairs files regarding misconduct complaints;
24 policies and procedures manual; forms used by internal affairs for recording and
25 processing complaints; annual reports of the internal affairs division; a listing of
26 complaints; investigation case files; audits and reviews of the officers' unit; complaints
27 involving administrative violations by the officers; use of force reports for the officers;
28 records of arrests by the individual officers; reports regarding injuries received by the

1 officers; reports regarding injuries to persons arrested by the officers; performance
2 evaluations; and training materials that concern the use of force.

iii. Interrogatories

4 Plaintiff anticipates propounding interrogatories after reviewing defendants' initial
5 document production. The document request is expected to elicit policies, procedure,
6 training, and standards applicable to the individual officers. Plaintiff's subsequent
7 interrogatories will likely focus on identification of and narrowing of the City's policies,
8 procedures, training, and standards applicable to individual officers to assist in
9 determining the reasonableness of the individual officers' actions in the subject incident.

iv. Requests for Admission

11 Plaintiff anticipates propounding requests for admission after depositions and
12 reviewing other discovery responses. Plaintiff's subsequent requests for admission will
13 likely focus on the individual officers' violations of City policies, procedures, training, and
14 standards by individual officers in relation to the reasonableness of their actions in the
15 subject incident.

v. Key Witnesses

17 Plaintiff believes the six parties, approximately six witnesses to the
18 circumstances and events surrounding the incident, and medical service providers are
19 the key witnesses to this action.

vi. Information Plaintiff Believes Essential to Obtain from Defendants

21 Plaintiff believes the documents identified above and the depositions of each
22 defendant are essential. Plaintiff will also likely require "PMK" depositions for the San
23 Francisco Police Department and the San Francisco Sheriff's Department.

B. Defendants' Discovery Plan

i. Depositions

26 Based on the current information in Defendants' possession, Defendants intend
27 to take the depositions of Plaintiff, Amy Alton, and Elisabeth Chaplin. Defendants may
28 take additional witness deposition once Defendants learn the identity of additional

1 witnesses.

2 Defendants also may take the depositions of damages witnesses, including any
3 treating medical staff who treated Plaintiff and other damages witnesses. Plaintiff has
4 not yet disclosed these persons, if any.

5 Defendants also intend to depose any expert witnesses disclosed by Plaintiff.

6 ii. Requests for Production

7 Defendants are propounding to Plaintiff the following requests for production:

- 8 • All DOCUMENTS IDENTIFIED or referred to in YOUR initial disclosures.
- 9 • All DOCUMENTS IDENTIFIED or referred to in YOUR responses to
10 interrogatories in this case.
- 11 • All DOCUMENTS relating to, referring to, or describing the INCIDENT.
- 12 • All DOCUMENTS that YOU contend support YOUR claim that any
13 defendant in this case is liable to YOU.
- 14 • All DOCUMENTS reflecting or constituting communications relating to the
15 INCIDENT, including without limitation emails, letters, and notes.
- 16 • All DOCUMENTS containing, reflecting, or relating to any statements
17 about the INCIDENT by any defendant(s) in this lawsuit.
- 18 • All witness statements relating to or referring to the INCIDENT.
- 19 • All DOCUMENTS relating to or reflecting YOUR criminal history.
- 20 • All DOCUMENTS relating to, referring to, describing, evidencing, or
21 supporting any damages that YOU are claiming in this case.
- 22 • YOUR medical records relating to the INCIDENT.
- 23 • All DOCUMENTS reflecting any jobs held or income earned by YOU
24 before the INCIDENT.

25 iii. Interrogatories

26 Defendants are propounding the following interrogatories to Plaintiff:

- 27 • State every name that YOU have used in YOUR life.
- 28 • What is YOUR date of birth?

1 • Please provide all home addresses where YOU have lived.

2 • Please describe with particularity each crime of which YOU have been

3 convicted, including without limitation the name of the crime, the court in which

4 YOU were convicted, the date of conviction, and the case number of the matter

5 that resulted in the conviction.

6 • Describe with particularity all lawsuits that YOU have filed. Please include

7 the titles of the lawsuits, the names of the parties, the courts in which the lawsuits

8 were filed, the case number, the facts underlying the lawsuits, and the

9 resolutions of the lawsuits.

10 • Describe with particularity how the INCIDENT occurred.

11 • Please state all facts supporting YOUR claim that any employee of the

12 City and County of San Francisco is liable for violating YOUR federal

13 constitutional rights, including a description with particularity of what each

14 specific employee is alleged to have done.

15 • Please state all facts supporting YOUR claim that any employee of the

16 City and County of San Francisco is liable to YOU under California law, including

17 a description with particularity of what each specific employee is alleged to have

18 done.

19 • Please describe all damages that YOU are claiming in this lawsuit,

20 including an itemization of the types and amounts of damages that YOU are

21 claiming.

22 • IDENTIFY all persons with knowledge of the damages that YOU are

23 claiming in this lawsuit.

24 • Describe all physical injuries that YOU sustained as a result of the

25 INCIDENT.

26 • As of immediately before the INCIDENT, did YOU have any mental,

27 physical, or emotional disability or injury that is similar to, or affecting the same

28

1 parts of YOUR body as, any disabilities or injuries that YOU are claiming as a
2 result of the INCIDENT.

- 3 • Are YOU claiming severe emotional distress or psychological injury as a
4 result of the INCIDENT?
- 5 • If YOU are claiming severe emotional distress or psychological injury as a
6 result of the INCIDENT, please state all facts supporting that claim.]
- 7 • If YOU are claiming severe emotional distress or psychological injury as a
8 result of the INCIDENT, please IDENTIFY all persons with knowledge of that
9 claim.
- 10 • Are YOU claiming that YOU lost income (past, present, or future) as a
11 result of the INCIDENT?
- 12 • If YOU are claiming that YOU lost income (past, present, or future) as a
13 result of the INCIDENT, state all facts supporting such claim, including without
14 limitation the precise amount of lost income that YOU are claiming and the
15 method of calculating that amount?
- 16 • If YOU are claiming that YOU lost income (past, present, or future) as a
17 result of the INCIDENT, IDENTIFY all persons with knowledge of that claim.
- 18 • If YOU are claiming that YOU lost income (past, present, or future) as a
19 result of the INCIDENT, IDENTIFY all DOCUMENTS supporting that claim.
- 20 • IDENTIFY all health care professionals who treated YOU as a result of the
21 INCIDENT.
- 22 • IDENTIFY all mental health professionals, including without limitation
23 psychiatrists, psychologists, therapists, counselors, and social workers, from
24 whom YOU have obtained treatment or counseling in the past ten years.
- 25 • IDENTIFY all health care professionals who treated YOU from ten years
26 before the INCIDENT through the present.
- 27 • Are you currently experiencing any physical, mental, or emotional
28 symptoms, pain, or problems as a result of the INCIDENT?

1 • If YOUR response to interrogatory 23 is anything but an unqualified
2 negative response, please describe all physical, mental, or emotional symptoms,
3 pain, or problems that you are currently experiencing as a result of the
4 INCIDENT?

5 • Please state all facts supporting your claim that the City and County of
6 San Francisco is liable to YOU under either federal or state law, including without
7 limitation all facts supporting YOUR claim that a policy, custom, or usage of the
8 City and County of San Francisco caused all or part of the injuries that YOU are
9 claiming in this case.

10 iv. Requests for Admission

11 Defendants may propound requests for admission on Plaintiff asking him to verify
12 specific facts and to authenticate specific documents. Defendants will not propound
13 RFAs until relatively late in the discovery period.

14 v. Key Witnesses

15 Key witnesses are Plaintiff, Amy Alton, Elisabeth Chaplin, the five individual
16 defendants, and the paramedic who examined Plaintiff (whose name we do not yet
17 have).

18 vi. Information Defendant Believes Essential To Obtain From Plaintiff

19 Defendants will need to take the depositions of Plaintiff, Amy Alton, Elisabeth
20 Chaplin, and the paramedic who examined Plaintiff. Defendants will also need to obtain
21 interrogatory responses and medical records relating to the incident. Defendants also
22 may need to obtain a psychological IME of Plaintiff if he is claiming psychological injury
23 from the incident.

24 vii. Limitations on Discovery/Phasing

25 Defendants contend that *Monell* discovery should be stayed and deferred until
26 adjudication of the underlying constitutional claims. Defendants also contend that
27 punitive-damages discovery should be stayed and deferred, given that punitive
28 damages should be bifurcated from liability in this case.

1 **9. CLASS ACTIONS**

2 Not applicable

3 **10. RELATED CASES**

4 None

5 **11. RELIEF**

6 Plaintiff seeks monetary damages as follows: Medical Expenses; General
7 Damages of \$5,000,000.00 (estimated). Defendants are seeking attorneys fees and
8 costs.

9 **12. ALTERNATIVE DISPUTE RESOLUTION:**

10 The parties have discussed, requested and have been ordered to the following
11 court ADR process: mediation. Plaintiff would need to conclude the depositions of the
12 defendants and obtain the documents listed in paragraph 8 above to prepare for
13 settlement discussions.

14 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES:**

15 The parties do not consent to trial of this case by a United States Magistrate
16 Judge.

17 **14. OTHER REFERENCES:**

18 The parties do not feel that this case is appropriate for other references.

19 **15. NARROWING OF ISSUES:**

20 None

21 **16. EXPEDITED SCHEDULING:**

22 The parties do not believe that this case is suitable for expedited scheduling.

23 **17. SCHEDULING:**

24 The Court will need to set dates for the close of discovery, summary judgment
25 (hearing and briefing), and expert disclosures.

26 **18. TRIAL**

27 The case will be tried to a jury. Plaintiff anticipates that the trial may last 10 court
28 days. The parties propose a trial date in mid-November 2008.

1 **19. DISCLOSURE OF NON-PARTY INTERESTED PERSONS OR ENTITIES:**

2 The parties are unaware of entities with either a financial interest in the subject
3 matter of the controversy or any other kind of interest that could be substantially
4 affected by the outcome of the proceeding.

5

6 DATED: 11/30/07 LAW OFFICES OF SANFORD M. CIPINKO

7

8 By: Jeremy Cloyd
9 SANFORD M. CIPINKO
10 JEREMY CLOYD
11 Attorneys for Plaintiff Mehrdad Alemozaffar

12

13 DATED: _____ DENNIS J. HERRERA
14 City Attorney
15 JOANNE HOOPER
16 Chief Trial Deputy
17 SCOTT D. WIENER
18 Deputy City Attorney

19

20 By: _____
21 SCOTT D. WIENER
22 Attorneys for Defendant City and County of
23 San Francisco

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4 affected by the outcome of the proceeding.

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DATED: _____

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DATED: 11/28/07

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LAW OFFICES OF SANFORD M. CIPINKO

By: _____

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DENNIS J. HERRERA

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Attorneys for Defendant City and County of
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TOTAL P.02